essential that it should be made in reasonable expectation of death. *Barstow v. Tetlow* (1916) 115 Me. 96; *Northrip v. Burge* (1914) 255 Mo. 641. Story declares that the validity of the gift is conditional upon the death of the donor as a result of his existing illness. Story, *Equity Jurisprudence,* Vol. I, sec. 607a. After this follow dicta in numerous cases that death must result from that very illness. *Robson v. Robson Adm'r* (1866) 3 Del. Ch. 51; *Dickeschied v. Bank* (1886) 28 W. Va. 340; *In re Elliott's Estate* (1913) 159 Ia. 107. In one case where the party was taken to a hospital suffering from a disease, and death resulted three months later, recovery was denied on the ground that it was not proved that the same disorder caused the death. *Conser. v. Snowden* (1880) 54 Md. 175. On the other hand, a man who successfully underwent an operation for a hernia, but who finally died some weeks later of heart failure was held to have made a valid *donatio causa mortis. Ridden v. Thrall* (1891) 125 N. Y. 572. This court declares that it is not necessary that the patient should have died of the same disease, and that it is sufficient if the donor does not recover from the disease from which he then apprehended death. In the principal case, the decision is not rested upon this ground alone, but the court found evidence from which to infer that the woman died as a result of the disease from which she was suffering four months previously.

J. E. H.

LANDLORD AND TENANT—OPTION TO PURCHASE—CONDITION PRECEDENT TO LESSOR'S DUTY TO CONVEY.—COOK V. HOUGHTON (1917) 100 ATL. (VT.) 115.—The defendant leased land to the plaintiff and covenanted that the plaintiff should be entitled to a deed of the premises at the expiration of the term, provided he should at that time pay to the defendant a stipulated amount. Before the expiration of the term the defendant brought an action of ejectment against the plaintiff, and pending trial the plaintiff had to give a bond for bail. This prevented him from tendering payment at the expiration of the lease. The plaintiff later won the ejectment suit, and now brings a bill for the enforcement of his option. *Held,* that the plaintiff's failure to tender payment at the time specified did not deprive him of his rights under the option agreement.

Inequitable or fraudulent conduct by which one party to a contract makes it impossible for the other to perform a condition precedent to the first party's liability is usually treated as a waiver of the condition. *Batterbury v. Vyse* (1863) 2 H. & C. 42. Upon this ground the conclusion reached in the principal case was undoubtedly correct. But the court went further and endeavored to justify their decision upon other grounds, saying: "Equity does not consider the mere fixing of a definite date for performance as making time of the essence of the contract"; and intimated that even apart from the inequitable conduct of the defendant, the plaintiff would have prevailed. In many cases the courts have applied this doctrine with the result that they have disregarded the nonfulfilment of an express condition precedent consisting of payment or notice, to be made or given at a particular date. *Barnard v. Lee* (1868) 97 Mass. 94; *Jones v. Robbins* (1849) 29 Me. 351; *Parlin v. Thorald*

(1852) 16 Beav. 59; *McLean v. Windam* (1912) 85 Vt. 167. In all of these cases the courts preferred to look for the real "intention" of the parties or to consider "substantial" performance as a substitute. Obviously, when the courts have done this they have in fact refused to enforce the legal relations arising out of the agreement of the parties, and have imposed legal relations created by the court. A court of equity, no more than a court of law, has power to change the terms of a contract, and it is believed that no search for the "intention" of the parties on the part of the court should ever justify a refusal to enforce the express words of the agreement. An express condition precedent whether considered to be reasonable or unreasonable should always be enforced, for after all, in the long run, the best test of what the contracting parties meant is what they said. The other line is represented by the following cases: *Brooke v. Garrod* (1857) 2 DeG. & J. 62; *Dibbins v. Dibbins* [1896] 2 Ch. 348; *Kemp v. Humphreys* (1852) 13 Ill. 573. In all of those cases time conditions were rightly and strictly enforced. There is a difference between a contract in which A and B mutually promise to pay and convey on a day named, and a contract in which B agrees to convey to A upon condition that payment is made on a specified date. *Ranelagh v. Melton* (1864) 2 Dr. & Sm. 278. In the latter case tender of payment on the day set is an express condition precedent and should be enforced. In the former it may not be, and in such a case it may often be proper and even necessary for the court to search out the real intention of the parties. Cf. *Bettini v. Gye* (1876) 1 Q.B.D. 183. The court in discussing the nature of the option said: "This privilege of purchase is not a mere offer but is a part of the consideration for the stipulations of the lessee, and any performance of his stipulations was the payment of some consideration towards the acquisition of the deed." If the court meant by this statement that performance of the covenants of the lease by the lessee was also part performance of the agreed equivalent to be given for the conveyance, it was probably error. The promise of the plaintiff to perform the stipulations of the lease was the consideration given for his lease-hold interest. That promise was also given in return for the option privilege. But it was not "consideration towards the acquisition of the deed." For a detailed treatment of the above points and others collaterally involved, see Professor Arthur L. Corbin, Option Contracts (1914) 23 YALE LAW JOURNAL, 641. C. M.

MARRIAGE—PROOF—SUFFICIENCY TO ESTABLISH.—GREEN v. NEW ORLEANS, S. & G. I. R. Co. (1917) 74 So. (LA.) 717.—The plaintiff sought to establish a contract of marriage by an indirect mode of inference; the marriage license which by statute was made the direct mode not being offered. *Held,* that it must be shown by evidence of a "convincing character" that the parties entered into their relations with the *bona fide* intention of permanently assuming the obligations and responsibilities of marriage; and that they carried their intentions into effect.

For a discussion of this question with special reference to the subsequent validation of a marriage illegal in its origin, see (1916) 26 YALE LAW JOURNAL, 145. S. F. D.